

## Tax Commission Rule Review Checklist

(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Policies and Procedures Regarding Public Disclosure  
**Statutory Reference:** 41-3-209, 59-1-210, 59-1-403  
**Rule Number:** R861-1A-12

4. Purpose of the rule or reason for the change:

The proposed amendment deletes language that is contained in statute; clarifies the treatment of property tax orders; clarifies information the commission may disclose regarding a delinquency; and indicates that hearings related to the enforcement of Title 41, Chapter 4, Motor Vehicle Business Regulation, will be considered public.

6. Summary of the rule change:

The proposed amendment clarifies when a property tax order may be disclosed to persons other than the named parties; deletes language regarding commission notes and workpapers, and sharing of information with political subdivisions and the Multistate Tax Commission that are sufficiently covered in statute; defines "delinquent taxpayer" and clarifies the information the commission may disclose regarding delinquent taxpayers; provides that hearings related to enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, and orders resulting from those hearings are public information; and makes technical changes.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. Most of the proposed changes match current practice; changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact.

B) Local Government: None. Most of the proposed changes match current practice; changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact.

C) Small Businesses (50 or less employees): None. Most of the proposed changes match current practice; changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact.

D) Persons other than small businesses or local government: None. Most of the proposed changes match current practice; changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency): None. Most of the proposed changes match current practice; changes resulting from opening hearings and publicizing the resulting orders do not have any cost impact.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*These proposals do not affect practices established by statute. Designating public hearings and orders does not create a fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive: Yes

Nonsubstantive:

Result of 5 year review: No

Originated by:

Commissioners

Drafted by:

Lynn Solarczyk

Reviewed with Divisions:

Approved by Executive Director:

Approved for Submittal to DAR: SEE BELOW

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

Date:

Date:

Date:

Date:

Date:

5/24/12

5.3.12

# DRAFT

**R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. [Section]Sections 41-3-209, 59-1-210, and 59-1-403.**

[This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.]

[A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations:

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.]

[B.](1) [Other Tax Orders.]Orders and Hearings.

(a) Written orders signed by the [Commission]commission relating to all tax appeals other than property tax matters will [also] be mailed to the appropriately named parties in accordance with [the Commission rules of procedure]commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

[1.](i) [if the Commission determines that] the parties have affirmatively waived any claims to confidentiality; or

[2.](ii) [if the Commission determines that] the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the [Commission]commission.

(b)(i) Property tax orders signed by the commission will be mailed to the appropriately named parties in accordance with commission procedures.

(ii) Property tax orders that do not contain commercial information may also be made available to persons other than the named parties.

(iii)(A) Property tax orders that contain commercial information are subject to Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(B) Property tax orders that contain commercial information may also be made available to persons other than the named parties if the parties have affirmatively waived any claims to confidentiality.

(c)(i) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

40 (ii) Orders resulting from a hearing described in Subsection (1)(c)(i) are public  
41 information and may be publicized.

42 ~~[C. Imposition and Waiver of Penalty and Interest.~~

43 ~~1. All facts surrounding the imposition of penalty and interest charges as well as requests~~  
44 ~~for waiver of penalty and interest charges are considered confidential and will not be disclosed to~~  
45 ~~any persons other than the parties specifically involved. These facts include the names of the~~  
46 ~~involved parties, the amount of penalty and interest, type of tax involved, amount of the tax~~  
47 ~~owed, reasons for the imposition of the penalty and interest, and any other information relating to~~  
48 ~~imposition of the penalty and interest, except as follows:~~

49 ~~(a) if the Commission affirmatively determines that a finding of fraud is involved and~~  
50 ~~seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent~~  
51 ~~facts available to the public once legal action against the parties has been commenced; or~~

52 ~~(b) if the Commission determines that the parties have affirmatively waived their rights~~  
53 ~~to confidentiality, the Commission will make all pertinent facts available to the public.~~

54 ~~D. Commission Notes and Workpapers.~~

55 ~~1. All workpapers, notes, and other material prepared by the commissioners, as well as~~  
56 ~~staff and employees of the Commission, are to be considered confidential, and access to the~~  
57 ~~specific material is restricted to employees of the Commission and its legal counsel only.~~  
58 ~~Examples of this restricted material include audit workpapers and notes, ad valorem appraisal~~  
59 ~~worksheets, and notes taken during hearings and deliberations. In the case of information~~  
60 ~~prepared as part of an audit, the auditing division will, upon request, provide summary~~  
61 ~~information of the findings to the taxpayer. These items will not be available to any person or~~  
62 ~~party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.~~

63 ~~2. Relevant workpapers of the property tax division prepared in connection with the~~  
64 ~~assessment of property by the Commission, pursuant to the provisions of Utah Code Ann.~~  
65 ~~Section 59-2-217, shall be provided to the owner of the property to which the assessment relates,~~  
66 ~~at the owner's request.]~~

67 ~~[E.](2) Reciprocal Agreements.~~

68 ~~(a) [Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the~~  
69 ~~Commission]The commission may enter into individual reciprocal agreements to share specific~~  
70 ~~tax information with authorized representatives of the United States Internal Revenue~~  
71 ~~Service[;]or the revenue service of any other state.~~

72 ~~(b) For all taxes other than individual income tax and corporate franchise tax, the~~  
73 ~~commission may share information gathered from returns and other written statements with [tax~~  
74 ~~officials of]the federal government, other states, and [representatives of local~~  
75 ~~governments]political subdivisions within and without the state [of Utah; provided, however,~~  
76 ~~that no information will be provided to any governmental entity if providing such information~~  
77 ~~would violate any statute or any agreement with the Internal Revenue Service]if the political~~  
78 ~~subdivision, state, or federal government grant substantially similar privileges to this state.~~

79 ~~[F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission~~  
80 ~~may provide departments and political subdivisions of the state of Utah with copies of returns~~  
81 ~~and other information required by Chapter 12 of Title 59. This information is available only in~~  
82 ~~official matters and must be requested in writing by the head of the department or political~~  
83 ~~subdivision. The request must specifically indicate the information being sought and how the~~  
84 ~~information will be used. The Commission will respond in writing to the request and shall~~  
85 ~~impose conditions of confidentiality on the use of the information disclosed.~~



86 ~~G. Multistate Tax Commission. The Commission is authorized to share specific tax~~  
87 ~~information for audit purposes with the Multistate Tax Commission.]~~

88 ~~[H.](3) Statistical Information. The [Commission]commission~~ authorizes the  
89 preparation and publication of statistical information regarding the payment and collection of  
90 state taxes. The information will be ~~[prepared by the various divisions of the Commission and]~~  
91 made available after review and approval of the ~~[Commission]commission~~.

92 ~~[I.](4) [Public Record Information.]Publication of Delinquent Taxpayer Information.~~

93 ~~(a) For purposes of this Subsection (4), "delinquent taxpayer" does not include a person~~  
94 ~~subject to a tax under:~~

95 ~~(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;~~

96 ~~(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and~~  
97 ~~Information;~~

98 ~~(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or~~

99 ~~(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity~~  
100 ~~Taxpayers Act.~~

101 ~~(b) [Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission]The commission~~ may  
102 publicize the following information relating to a delinquent taxpayer:

103 ~~(i) name[ and other appropriate information, as contained in the public record, concerning~~  
104 ~~delinquent taxpayers, including their];~~

105 ~~(ii) [addresses,]address;~~

106 ~~(iii) the amount of money owed by tax type[, as well as]; and~~

107 ~~(iv) any legal action taken by the [Commission]commission, including charges filed[, and~~  
108 ~~property seized[, etc. No information will be released which is not part of the existing public~~  
109 ~~record].~~

**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

**R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. ~~[Section]~~Sections 41-3-209, 59-1-210, and 59-1-403.**

~~[This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.]~~

~~[A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations:~~

~~1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.~~

~~2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.]~~

~~[B.](1) [Other Tax Orders.]Orders and Hearings.~~

~~(a) Written orders signed by the [Commission]commission relating to all tax appeals other than property tax matters will [also] be mailed to the appropriately named parties in accordance with [the Commission rules of procedure]commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:~~

~~[1.](i) [if the Commission determines that] the parties have affirmatively waived any claims to confidentiality; or~~

~~[2.](ii) [if the Commission determines that] the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the [Commission]commission.~~

~~(b)(i) Property tax orders signed by the commission will be mailed to the appropriately named parties in accordance with commission procedures.~~

~~(ii) Property tax orders that do not contain commercial information may also be made available to persons other than the named parties.~~

~~(iii)(A) Property tax orders that contain commercial information are subject to Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.~~

~~(B) Property tax orders that contain commercial information may also be made available to persons other than the named parties if the parties have affirmatively waived any claims to confidentiality.~~

~~(c)(i) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.~~

~~(ii) Orders resulting from a hearing described in Subsection (1)(c)(i) are public information and may be publicized.~~

~~[C. Imposition and Waiver of Penalty and Interest.~~

~~1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to~~

any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

**D. Commission Notes and Workpapers.**

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.]

**[E.](2) Reciprocal Agreements.**

(a) [Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission]The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service[;]or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with [tax officials of]the federal government, other states, and [representatives of local governments]political subdivisions within and without the state [of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service]if the political subdivision, state, or federal government grant substantially similar privileges to this state.

[F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

**G. Multistate Tax Commission.** The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.]

**[H.](3) Statistical Information.** The [Commission]commission authorizes the preparation and publication of statistical information regarding the payment and collection of

state taxes. The information will be ~~[prepared by the various divisions of the Commission and]~~ made available after review and approval of the ~~[Commission]~~commission.

~~[F.](4) [Public Record Information.]~~Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (4), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) [Pursuant to Utah Code Ann. 59-1-403(3)(e), the Commission]The commission may publicize the following information relating to a delinquent taxpayer:

(i) name[and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their];

(ii) [addresses,]address;

(iii) the amount of money owed by tax type[,as well as]; and

(iv) any legal action taken by the [Commission]commission, including charges filed[,and property seized[,etc. No information will be released which is not part of the existing public record].

**KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements**

**Date of Enactment or Last Substantive Amendment: December 8, 2011**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition**

## Tax Commission Rule Review Checklist

(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** **Time of Appeal**  
**Statutory Reference:** 59-1-301; 59-1-501; 59-2-1007; 59-7-517; 59-10-532; 59-10-533;  
59-10-535; 59-12-114; 59-13-210; 63G-4-201; 63G-4-401;  
68-3-7; 68-3-8.5  
**Rule Number:** R861-1A-20

4. Purpose of the rule or reason for the change:

The proposed amendment clarifies the time in which a person may appeal an action of the Motor Vehicle Division or the Motor Vehicle Enforcement Division.

6. Summary of the rule change:

The proposed amendment clarifies that Motor Vehicle Division and Motor Vehicle Enforcement Division actions must be appealed within 30 days of the date of a notice that creates the right to appeal, and indicates when an appeal is deemed to be timely filed.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. The proposed amendment matches long-standing agency practice.

B) Local Government: None. The proposed amendment matches long-standing agency practice.

C) Small Businesses (50 or less employees): None. The proposed amendment matches long-standing agency practice.

D) Persons other than small businesses or local government: None. The proposed amendment matches long-standing agency practice.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency): None. The proposed amendment mirrors the direction the Motor Vehicle Division and Motor Vehicle Enforcement Division have included on notices of action. There is no change in practice.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This amendment conforms the rule to agency practice thus creating no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
Office of the Tax Commissioners  
Drafted by:  
Lynn Solarczyk  
Reviewed with Divisions:

Approved by Executive Director:

Approved for Submittal to DAR: SEE BELOW

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5/1/12

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# DRAFT

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.**

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be

40 received in the commission offices no later than 30 days from the date of a notice that creates the  
41 right to appeal.

42 (b) An appeal under Subsection (4)(a) is deemed to be timely if:

43 (i) in the case of mailed or hand-delivered documents:

44 (A) the petition is received in the commission offices on or before the close of business  
45 of the last day of the 30-day time period; or

46 (B) the date of the postmark on the envelope or cover indicates that the request was  
47 mailed on or before the last day of the 30-day time period; or

48 (ii) in the case of electronically-filed documents, the petition is received no later than  
49 midnight of the last day of the 30-day time period.

50 (c) An appeal of an action that is mailed but not received in the commission offices shall  
51 be considered timely filed if the sender complies with the provisions of Subsection 68-3-  
52 8.5(2)(b) and (c).

53 [(4)](5) Any party adversely affected by an order of the commission may seek judicial  
54 review within the time frame provided by statute. Copies of the appeal shall be served upon the  
55 commission and upon the Office of the Attorney General.



**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.**

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

[(4)](5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

**KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements**

**Date of Enactment or Last Substantive Amendment: December 8, 2011**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition**

## Tax Commission Rule Review Checklist

(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations  
**Statutory Reference:** 59-7-104  
**Rule Number:** R865-6F-6

4. Purpose of the rule or reason for the change:

The proposed amendment deletes language to conform with case law and Multistate Tax Commission model rule changes.

6. Summary of the rule change:

The proposed amendment deletes language providing that delivery of goods in a seller's own vehicle, if above a de minimis level, creates nexus for corporation income and franchise tax purposes. This change reflects current agency practice and results from case law and amendments to the corresponding Multistate Tax Commission model rule.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. The proposed amendment amends the rule to match long-standing agency practice.

B) Local Government: None. The proposed amendment amends the rule to match long-standing agency practice.

C) Small Businesses (50 or less employees): None. The proposed amendment amends the rule to match long-standing agency practice.

D) Persons other than small businesses or local government: None. The proposed amendment amends the rule to match long-standing agency practice.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency): None. The proposed amendment amends the rule to match long-standing agency practice.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This change conforms the rule with law and practice thus creating no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
Utah Educational Savings Plan management

Date:

Drafted by:  
Lynn Solarczyk

Date:

Reviewed with Divisions:

Date:

5/1/12

Approved by Executive Director:

Date:

5.1.12

Approved for Submittal to DAR: SEE BELOW

Date:

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli



**Draft Amendment**  
**April 4, 2012**

**R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**

~~[A-]~~(1) Definitions.

~~[1-]~~(a) "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

~~[2-]~~(b) "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

~~[3-]~~(c) "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

~~[a-]~~(i) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

~~[b-]~~(ii) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

~~[e-]~~(iii) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

~~[4-]~~(d) "Solicitation" means:

~~[a-]~~(i) speech or conduct that explicitly or implicitly invites an order; and

~~[b-]~~(ii) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

~~[B-]~~(2) Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

~~[C-]~~(3) Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

~~[1-]~~(a) they maintain no office nor stocks of goods in Utah, and

~~[2-]~~(b) they engage in no other activities in Utah.

41       ~~[D.](4)~~ Foreign corporations not qualified in Utah that make deliveries from stocks of  
42 goods located in this state are doing business in this state and are taxable under the Corporation  
43 Franchise Tax Act, even though they have no office or regular place of business in this state.

44       ~~[E.](5)~~ Foreign corporations not qualified in Utah are subject to the franchise tax if  
45 performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their  
46 own employees or by furnishing of supervisory personnel.

47       ~~[F.](6)~~ Corporations that own real property within this state and rent or lease such  
48 properties to others are subject to the franchise tax whether or not qualified under the laws of this  
49 state. This also applies to corporations deriving royalty, lease, or rental income from properties  
50 located within this state, whether or not such properties are owned by the corporation.

51       ~~[G.](7)~~ Foreign corporations not qualified in Utah are subject to the franchise or income  
52 tax if they derive income from revenue-producing properties located in Utah or moving through  
53 Utah or from services performed by personnel in this state. This includes, but is not limited to,  
54 freight and transportation operations, sales of real property having a Utah situs, leasing or sales  
55 of franchises, sporting or entertaining events, etc.

56       ~~[H.](8)~~ Corporations that participate in joint ventures or working and operating  
57 agreements which are performed in this state are subject to the franchise tax whether qualified or  
58 not.

59       ~~[I.](9)~~ Foreign corporations qualified in Utah are subject to the franchise tax even though  
60 engaged solely in interstate commerce.

61       ~~[J.](10)~~ P.L. 86-272 restricts a state from imposing a net income tax on income derived  
62 within its borders from interstate commerce if the only business activity of the company within  
63 the state consists of the solicitation of orders for sales of tangible personal property, which orders  
64 are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or  
65 delivery from a point outside the state. The term "net income tax" includes a franchise tax  
66 measured by net income. If any sales of tangible personal property are made from Utah into a  
67 state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain  
68 subject to throwback to Utah pursuant to ~~[Section]~~Subsection 59-7-318(2). Similarly, a sale into  
69 Utah from another state would not subject a corporation to the Utah tax if the corporation's  
70 activities do not exceed those allowed under P.L. 86-272.

71       ~~[1.](a)~~ Only the solicitation to sell personal property is afforded immunity under P.L. 86-  
72 272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or  
73 transactions involving intangibles such as franchises, patents, copyrights, trade marks, service  
74 marks and the like, or any other type of property are not protected activities under P. L. 86-272.  
75 The sale or delivery and the solicitation for the sale or delivery of any type of service that is not  
76 either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also  
77 not protected under P.L. 86-272 or this rule.

78       ~~[2.](b)~~ For the in-state activity to be a protected activity under P.L. 86-272, it must be  
79 limited solely to solicitation, except for de minimis activities and activities conducted by  
80 independent contractors as described below.

81       ~~[K.](11)~~ The following in-state activities, assuming they are not of a de minimis level,  
82 will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the  
83 Utah corporation franchise tax:

84       ~~[1.](a)~~ making repairs or providing maintenance or service to the property sold or to be  
85 sold;

86       [2-](b) collecting current or delinquent accounts, whether directly or by third parties,  
 87 through assignment or otherwise;  
 88       [3-](c) investigating credit worthiness;  
 89       [4-](d) installation or supervision of installation at or after shipment or delivery;  
 90       [5-](e) conducting training courses, seminars, or lectures for personnel other than  
 91 personnel involved only in solicitation;  
 92       [6-](f) providing any kind of technical assistance or service including engineering  
 93 assistance or design service, when one of the purposes thereof is other than the facilitation of the  
 94 solicitation of orders;  
 95       [7-](g) investigating, handling, or otherwise assisting in resolving customer complaints,  
 96 other than mediating direct customer complaints when the sole purpose of such mediation is to  
 97 ingratiate the sales personnel with the customer;  
 98       [8-](h) approving or accepting orders;  
 99       [9-](i) repossessing property;  
 100       [10-](j) securing deposits on sales;  
 101       [11-](k) picking up or replacing damaged or returned property;  
 102       [12-](l) hiring, training, or supervising personnel, other than personnel involved only in  
 103 solicitation;  
 104       [13-](m) using agency stock checks or any other instrument or process by which sales are  
 105 made within this state by sales personnel;  
 106       [14-](n) maintaining a sample or display room in excess of two weeks (14 days) at any  
 107 one location within the state during the tax year;  
 108       [15-](o) carrying samples for sale, exchange or distribution in any manner for  
 109 consideration or other value;  
 110       [16-](p) owning, leasing, using, or maintaining any of the following facilities or property  
 111 in-state:  
 112       [~~(a)~~](i) repair shop;  
 113       [~~(b)~~](ii) parts department;  
 114       [~~(c)~~](iii) any kind of office other than an in-home office;  
 115       [~~(d)~~](iv) warehouse;  
 116       [~~(e)~~](v) meeting place for directors, officers, or employees;  
 117       [~~(f)~~](vi) stock of goods other than samples for sales personnel or that are used entirely  
 118 ancillary to solicitation;  
 119       [~~(g)~~](vii) telephone answering service that is publicly attributed to the company or to  
 120 employees or agents of the company in their representative status;  
 121       [~~(h)~~](viii) mobile stores, i.e., vehicles with drivers who are sales personnel making sales  
 122 from the vehicles;  
 123       [~~(i)~~](ix) real property or fixtures to real property of any kind[-];  
 124       [17-](q) consigning stocks of goods or other tangible personal property to any person,  
 125 including an independent contractor, for sale;  
 126       [18-](r) maintaining, by either an in-state or an out-of-state resident employee, an office  
 127 or place of business (in-home or otherwise) of any kind other than an in-home office;  
 128       [~~(b)~~](i) [The]the maintenance of any office or other place of business in this state that  
 129 does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss  
 130 of protection under this rule[-];

131           ~~[(e)]~~(ii) ~~[För]~~for purposes of this subsection it is not relevant whether the company pays  
132 directly, indirectly, or not at all for the cost of maintaining the in-home office~~[-]~~;

133           ~~[19-]~~(s) entering into franchising of licensing agreements; selling or otherwise disposing  
134 of franchises and licenses; or selling or otherwise transferring tangible personal property  
135 pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee  
136 within the state;

137           ~~[20- shipping or delivering of goods into this state by means of private vehicle, rail,~~  
138 ~~water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is~~  
139 ~~imposed, directly or indirectly, upon the purchaser;]~~

140           ~~[21-]~~(t) conducting any activity not listed as a protected activity below which is not  
141 entirely ancillary to requests for orders, even if such activity helps to increase purchases.

142           ~~[L-]~~(12) The following in-state activities will not cause the loss of protection for  
143 otherwise protected sales;

144           ~~[1-]~~(a) soliciting orders for sales by any type of advertising;

145           ~~[2-]~~(b) soliciting of orders by an in-state resident employee or representative of the  
146 company, so long as such person does not maintain or use any office or other place of business in  
147 the state other than an in-home office;

148           ~~[3-]~~(c) carrying samples and promotional materials only for display or distribution  
149 without charge or other consideration;

150           ~~[4-]~~(d) furnishing and setting up display racks and advising customers on the display of  
151 the company's products without charge or other consideration;

152           ~~[5-]~~(e) providing automobiles to sales personnel for their use in conducting protected  
153 activities;

154           ~~[6-]~~(f) passing orders, inquiries and complaints on to the home office;

155           ~~[7-]~~(g) missionary sales activities, i.e. the solicitation of indirect customers for the  
156 company's goods. For example, a manufacturer's solicitation of retailers to buy the  
157 manufacturer's goods from the manufacturer's wholesale customers would be protected if such  
158 solicitation activities are otherwise immune;

159           ~~[8-]~~(h) coordinating shipment or delivery without payment or other consideration and  
160 providing information relating thereto either prior or subsequent to the placement of an order;

161           ~~[9-]~~(i) checking of customer's inventories without a charge therefore if performed for  
162 reorder, but not for other purposes such as a quality control;

163           ~~[10-]~~(j) maintaining a sample or display room for two weeks (14 days) or less at any one  
164 location within the state during the tax year;

165           ~~[11-]~~(k) recruiting, training or evaluating sales personnel, including occasionally using  
166 homes, hotels or similar places for meetings with sales personnel;

167           ~~[12-]~~(l) mediating direct customer complaints when the purpose thereof is solely for  
168 ingratiating the sales personnel with the customer and facilitating requests for orders;

169           ~~[13-]~~(m) owning, leasing, using or maintaining personal property for use in the employee  
170 or representative's in-home office or automobile that is solely limited to the conducting of  
171 protected activities. Therefore, the use of personal property such as a cellular telephone,  
172 facsimile machine, duplicating equipment, personal computer and computer software that is  
173 limited to the carrying on of protected solicitation and activity entirely ancillary to such  
174 solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection  
175 of P.L. 86-272.



176 [M.](13) P.L. 86-272 provides protection to certain in-state activities if conducted by an  
177 independent contractor that would not be afforded if performed by the company or its employees  
178 or other representatives.

179 [1.](a) Independent contractors may engage in the following limited activities in the state  
180 without the company's loss of immunity;

181 [a.](i) soliciting sales;

182 [b.](ii) making sales;

183 [c.](iii) maintaining an office.

184 [2.](b) Sales representatives who represent a single principal are not considered to be  
185 independent contractors and are subject to the same limitations as those provided under P.L. 86-  
186 272 and this rule.

187 [3.](c) Maintenance of stock of goods in the state by the independent contractor under  
188 consignment or any other type of arrangement with the company, except for purposes of display  
189 and solicitation, shall remove the protection.

190 [N.](14) The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to  
191 business activities conducted in foreign commerce. Therefore, whether business activities are  
192 conducted by (i) a foreign or domestic company selling tangible personal property into a county  
193 outside of the United States from a point within this state or by (ii) either company selling such  
194 property into this state from a point outside of the United States, the principles under this rule  
195 apply equally to determine whether the sales transactions are protected and the company immune  
196 from taxation in either this state or in the foreign county, as the case might be, and whether, if  
197 applicable, the throwback provisions of [Section]Subsection 59-7-318(2) will apply.

198 [O.](15) The protection afforded by P.L. 86-272 and the provisions of this rule do not  
199 apply to any corporation that is incorporated or domiciled in this state.

200 [P.](16) A company that registers or otherwise formally qualifies to do business within  
201 this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate  
202 from or ancillary to such registration or qualification, the company receives and seeks to use or  
203 protect any additional benefit or protection from this state through activity not otherwise  
204 protected under P.L. 86-272 or this rule, such protection shall be removed.

205 [Q.](17) The protection afforded under P.L. 86-272 and the provisions of this rule shall  
206 be determined on a year by year tax basis. Therefore, if at any time during a tax year the  
207 company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this  
208 state or income earned by the company attributed to this state during any part of said tax year  
209 shall be protected from taxation for purposes of the corporate franchise tax.

**R865. Tax Commission, Auditing.**

**R865-6F. Franchise Tax.**

**R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**

~~[A.](1)~~ Definitions.

~~[1.](a)~~ "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

~~[2.](b)~~ "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

~~[3.](c)~~ "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

~~[a)](i)~~ The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

~~[b)](ii)~~ The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

~~[e)](iii)~~ Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

~~[4.](d)~~ "Solicitation" means:

~~[a)](i)~~ speech or conduct that explicitly or implicitly invites an order; and

~~[b)](ii)~~ activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

~~[B.](2)~~ Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

~~[C.](3)~~ Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

~~[1.](a)~~ they maintain no office nor stocks of goods in Utah, and

~~[2.](b)~~ they engage in no other activities in Utah.

~~[D.](4)~~ Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

~~[E.](5)~~ Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

~~[F.](6)~~ Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

~~[G.](7)~~ Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

~~[H.](8)~~ Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

~~[I.](9)~~ Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

~~[J.](10)~~ P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to ~~[Section]~~ Subsection 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

~~[1.](a)~~ Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

~~[2.](b)~~ For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

~~[K.](11)~~ The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

~~[1.](a)~~ making repairs or providing maintenance or service to the property sold or to be sold;

~~[2.](b)~~ collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

~~[3.](c)~~ investigating credit worthiness;

~~[4.](d)~~ installation or supervision of installation at or after shipment or delivery;

~~[5-]~~(e) conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

~~[6-]~~(f) providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

~~[7-]~~(g) investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

~~[8-]~~(h) approving or accepting orders;

~~[9-]~~(i) repossessing property;

~~[10-]~~(j) securing deposits on sales;

~~[11-]~~(k) picking up or replacing damaged or returned property;

~~[12-]~~(l) hiring, training, or supervising personnel, other than personnel involved only in solicitation;

~~[13-]~~(m) using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

~~[14-]~~(n) maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

~~[15-]~~(o) carrying samples for sale, exchange or distribution in any manner for consideration or other value;

~~[16-]~~(p) owning, leasing, using, or maintaining any of the following facilities or property in-state:

~~[(a)]~~(i) repair shop;

~~[(b)]~~(ii) parts department;

~~[(c)]~~(iii) any kind of office other than an in-home office;

~~[(d)]~~(iv) warehouse;

~~[(e)]~~(v) meeting place for directors, officers, or employees;

~~[(f)]~~(vi) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

~~[(g)]~~(vii) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

~~[(h)]~~(viii) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

~~[(i)]~~(ix) real property or fixtures to real property of any kind[-];

~~[17-]~~(q) consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

~~[18-]~~(r) maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

~~[(b)]~~(i) ~~[The]~~the maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule[-];

~~[(c)]~~(ii) ~~[For]~~for purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office[-];

~~[19-]~~(s) entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property

pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

~~[20.] shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;]~~

~~[21.](t)~~ conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

~~[L.](12)~~ The following in-state activities will not cause the loss of protection for otherwise protected sales;

~~[1.](a)~~ soliciting orders for sales by any type of advertising;

~~[2.](b)~~ soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

~~[3.](c)~~ carrying samples and promotional materials only for display or distribution without charge or other consideration;

~~[4.](d)~~ furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

~~[5.](e)~~ providing automobiles to sales personnel for their use in conducting protected activities;

~~[6.](f)~~ passing orders, inquiries and complaints on to the home office;

~~[7.](g)~~ missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

~~[8.](h)~~ coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

~~[9.](i)~~ checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

~~[10.](j)~~ maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

~~[11.](k)~~ recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

~~[12.](l)~~ mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

~~[13.](m)~~ owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

~~[M.](13)~~ P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

~~[1.](a)~~ Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

- [a)](i) soliciting sales;
- [b)](ii) making sales;
- [e)](iii) maintaining an office.

[2-](b) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

[3-](c) Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

[N-](14) The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of [Section]Subsection 59-7-318(2) will apply.

[O-](15) The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

[P-](16) A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

[Q-](17) The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

**KEY: taxation, franchises, historic preservation, trucking industries**

**Date of Enactment or Last Substantive Amendment: December 22, 2011**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 9-2-401 through 9-2-415; 16-10a-1501 through 16-10a-1533; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-6-102; 59-7; 59-7-101; 59-7-102; 59-7-104 through 59-7-106; 59-7-108; 59-7-109; 59-7-110; 59-7-112; 59-7-302 through 59-7-321; 59-7-402; 59-7-403; 59-7-501; 59-7-502; 59-7-505; 59-7-601 through 59-7-614; 59-7-608; 59-7-701; 59-7-703; 59-10-603; 59-13-202; 59-13-301; 63M-1; 63M-1-401 through 63M-1-416**

**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Higher Education Savings Incentive Program  
**Statutory Reference:** 53B-8a-112; 59-10-114; 59-10-1017  
**Rule Number:** R865-9I-49

4. Purpose of the rule or reason for the change:

The proposed amendment allows the Utah Educational Savings Incentive Plan Trust extra time to file information with the Tax Commission.

6. Summary of the rule change:

The proposed amendment revises the date by which the trustee of the Utah Educational Savings Plan Trust must file information with the Tax Commission concerning amounts contributed to or disbursed from the trust from January 31 to March 31. This change is made at the request of the Utah Educational Savings Plan management.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. The proposed amendment delays the time for filing a report with the Tax Commission.

B) Local Government: None. The proposed amendment delays the time for filing a report with the Tax Commission.

C) Small Businesses (50 or less employees): None. The proposed amendment delays the time for filing a report with the Tax Commission.

D) Persons other than small businesses or local government: None. The proposed amendment delays the time for filing a report with the Tax Commission.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency): None. The proposed amendment delays the time for filing a report with the Tax Commission and results from a request from the one entity that files the report.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*The delayed report deadline should have no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
Utah Educational Savings Plan management

Drafted by:  
Lynn Solarczyk

Reviewed with Divisions:

Approved by Executive Director:

Approved for Submittal to DAR: SEE BELOW

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

Date:

Date:

Date:

Date:

Date:

5/1/12

5.1.12





# DRAFT

**R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.**

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before ~~January~~ March 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

**R865. Tax Commission, Auditing.**

**R865-9I. Income Tax.**

**R865-9I-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.**

(1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

(2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:

(a) the amount contributed to the trust by the account owner; and

(b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.

(3) The trustee of the trust shall file form TC-675H with the commission on or before ~~January~~ March 31 of the year following the calendar year on which the forms are based.

(4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

**KEY: historic preservation, income tax, tax returns, enterprise zones**

**Date of Enactment or Last Substantive Amendment: December 22, 2011**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 59-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414**

**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** **Qualifying Sales and Use Tax and Telecommunications Charge Distributions and Redistributions**  
**Statutory Reference:** **59-12-210; 59-12-210.1; 69-2-5.8**  
**Rule Number:** **R865-12L-14**

4. Purpose of the rule or reason for the change:  
The proposed rule is necessary to implement 2012 HB 476.

6. Summary of the rule change:  
The proposed amendment updates the current rule on sales tax redistributions to reflect that under 2012 HB 476, telecommunications charges may only be redistributed in certain circumstances.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. Any fiscal impact would have been considered in 2012 HB 476

B) Local Government: None. Any fiscal impact would have been considered in 2012 HB 476.

C) Small Businesses (50 or less employees): None. Any fiscal impact would have been considered in 2012 HB 476.

D) Persons other than small businesses or local government: None. Any fiscal impact would have been considered in 2012 HB 476.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency):  
None. The proposed amendment indicates the instances in which the Tax Commission may redistribute telecommunications charges. Telecommunications charges will now be redistributed under the same circumstances as sales taxes.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This rule change reflects a statutory change thus creates no independent fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
2012 HB 476

Date:

Drafted by:

Date:

Lynn Solarczyk

Reviewed with Divisions:

Date:

Approved by Executive Director:

Date:

Approved for Submittal to DAR: SEE BELOW

*5/1/12*  
Date:

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

# DRAFT

**R865-12L-14. ~~[Local]~~Qualifying Sales and Use Tax and Telecommunications Charge  
Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210, ~~[and]~~  
59-12-210.1, and 69-2-5.8.**

(1) For purposes of making a redistribution of ~~[sales and use tax]~~ revenues under  
~~[Section]~~Sections 59-12-210.1 and 69-2-5.8:

(a) "de minimis" means less than \$1,000; and

(b) "extraordinary circumstances" means the following circumstances that the  
commission becomes aware of:

(i) an error in the commission's tax systems or procedures that increases or decreases the  
overall distribution of ~~[sales and use tax]~~qualifying sales and use tax revenues and qualifying  
telecommunications charge revenues to a county, city, or town by \$10,000 or more; or

(ii) an error in the calculation, collection, or reporting of a ~~[locally imposed]~~qualifying  
sales and use tax or qualifying telecommunications charge by a significant segment of an  
industry if the error increases or decreases the overall distribution of ~~[sales and use~~  
~~tax]~~qualifying sales and use tax revenues and qualifying telecommunications charge revenues to  
a county, city, or town by \$10,000 or more.

(2) The commission shall, on a monthly basis, furnish each county, city, and town with  
the listings of ~~[local]~~qualifying sales and use taxes and qualifying telecommunications charges  
remitted for transactions located within the county, city, or town.

(a) After receiving each listing, the county, city, or town shall advise the commission  
within 90 days:

(i) if the listing is incorrect; and

(ii) make corrections regarding firms omitted from the list or firms listed but not doing  
business in their taxing jurisdiction.

(b) The commission shall make subsequent distributions based on the notification the  
commission receives from a county, city, or town under Subsection (2)(a).

(3) If a redistribution is required by ~~[Section]~~Sections 59-12-210.1 or 69-2-5.8, the  
commission shall provide the notice of redistribution described in ~~[Subsection]~~Subsections 59-  
12-210.1(2) and 69-2-5.8(2) to each original and secondary recipient political subdivision that is  
impacted by the redistribution in an amount that exceeds the de minimis amount.

**R865. Tax Commission, Auditing.**

**R865-12L. Local Sales and Use Tax.**

**R865-12L-14. ~~[Local]~~Qualifying Sales and Use Tax and Telecommunications Charge  
Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210, ~~[and]~~  
59-12-210.1, and 69-2-5.8.**

(1) For purposes of making a redistribution of ~~[sales and use tax]~~ revenues under ~~[Section]~~Sections 59-12-210.1 and 69-2-5.8:

(a) "de minimis" means less than \$1,000; and

(b) "extraordinary circumstances" means the following circumstances that the commission becomes aware of:

(i) an error in the commission's tax systems or procedures that increases or decreases the overall distribution of ~~[sales and use tax]~~qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more; or

(ii) an error in the calculation, collection, or reporting of a ~~[locally imposed]~~qualifying sales and use tax or qualifying telecommunications charge by a significant segment of an industry if the error increases or decreases the overall distribution of ~~[sales and use tax]~~qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more.

(2) The commission shall, on a monthly basis, furnish each county, city, and town with the listings of ~~[local]~~qualifying sales and use taxes and qualifying telecommunications charges remitted for transactions located within the county, city, or town.

(a) After receiving each listing, the county, city, or town shall advise the commission within 90 days:

(i) if the listing is incorrect; and

(ii) make corrections regarding firms omitted from the list or firms listed but not doing business in their taxing jurisdiction.

(b) The commission shall make subsequent distributions based on the notification the commission receives from a county, city, or town under Subsection (2)(a).

(3) If a redistribution is required by ~~[Section]~~Sections 59-12-210.1 or 69-2-5.8, the commission shall provide the notice of redistribution described in ~~[Subsection]~~Subsections 59-12-210.1(2) and 69-2-5.8(2) to each original and secondary recipient political subdivision that is impacted by the redistribution in an amount that exceeds the de minimis amount.

**KEY: taxation, sales tax, restaurants, collections**

**Date of Enactment or Last Substantive Amendment: October 13, 2011**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 59-12-118; 59-12-205; 59-12-207; 59-12-210; 59-12-210.1; 59-12-301; 59-12-355; 59-12-501; 59-12-502; 59-12-602; 59-12-603; 59-12-703; 59-12-802; 59-12-804**

**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Specie Legal Tender  
**Statutory Reference:** 59-12-107  
**Rule Number:** R865-19S-123

4. Purpose of the rule or reason for the change:  
The proposed rule is necessary to implement 2012 HB 157.

6. Summary of the rule change:  
The proposed rule indicates the London fixing price that a seller shall use to determine the amount of sales tax due in specie legal tender and in dollars when the London fixing price is not available for the day on which a purchase is made in specie legal tender.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. Any fiscal impact would have been considered in 2012 HB 157.

B) Local Government: None. Any fiscal impact would have been considered in 2012 HB 157.

C) Small Businesses (50 or less employees): None. Any fiscal impact would have been considered in 2012 HB 157.

D) Persons other than small businesses or local government: None. Any fiscal impact would have been considered in 2012 HB 157.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency):  
None. The proposed rule indicates to use the latest available London fixing price to determine the tax on a transaction conducted in specie legal tender if there is no London fixing price available for the day on which the transaction occurs.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This proposal adopts the same standard as the amendments made to statute by 2012 HB 157, therefore, there is no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:

2012 HB 157

Drafted by:

Lynn Solarczyk

Reviewed with Divisions:

Approved by Executive Director:

Approved for Submittal to DAR: SEE BELOW

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

Date:

Date:

Date:

Date:

Date:

# DRAFT

1 **R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.**

2       For purposes of determining the amount of sales tax due in specie legal tender and in  
3 dollars for a purchase made in specie legal tender, if the London fixing price is not available for  
4 a day on which a purchase is made in specie legal tender, a seller shall use the latest available  
5 London fixing price for the specie legal tender the purchaser paid that precedes the date of the  
6 purchase.

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.**

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

**KEY: charities, tax exemptions, religious activities, sales tax**

**Date of Enactment or Last Substantive Amendment: February 9, 2012**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353**



**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Jeopardy Assessment  
**Statutory Reference:** 59-1-701; 59-1-702  
**Rule Number:** R867-2B-2

4. Purpose of the rule or reason for the change:  
The rule repeal is necessary to implement 2012 SB 243.

6. Summary of the rule change:  
The rule is repealed since the statute that authorizes it has been repealed in 2012 SB 243.

7. Aggregate anticipated cost or savings to:

- A) State Budget: None. Any fiscal impact would have been considered in 2012 SB 243.
- B) Local Government: None. Any fiscal impact would have been considered in 2012 SB 243.
- C) Small Businesses (50 or less employees): None. Any fiscal impact would have been considered in 2012 SB 243.
- D) Persons other than small businesses or local government: None. Any fiscal impact would have been considered in 2012 SB 243.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency):  
None. This rule is repealed since the statutes authorizing it have been repealed.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This amendment is necessary due to statutory changes made by 2012 SB243, thus creating no new fiscal impact*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
2012 SB 243

Date:

Drafted by:

Date:

Lynn Solarczyk

Reviewed with Divisions:

Date:

Approved by Executive Director:

Date:

Approved for Submittal to DAR: SEE BELOW

Date:

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

**Draft Repeal**  
**April 4, 2012**

**~~[R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702.~~**

~~A. Assessments made pursuant to Title 59, Chapter 19, Illegal Drug Stamp Act, shall meet the grounds for the jeopardy provisions under Sections 59-1-701 and 59-1-702 due to the nature of the tax and the likelihood that assets may be seized and sold by other creditors.]~~

**R867. Tax Commission, Collections.**

**R867-2B. Delinquent Tax Collection.**

**~~[R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702.~~**

~~A. Assessments made pursuant to Title 59, Chapter 19, Illegal Drug Stamp Act, shall meet the grounds for the jeopardy provisions under Sections 59-1-701 and 59-1-702 due to the nature of the tax and the likelihood that assets may be seized and sold by other creditors.]~~

**KEY: taxation, controlled substances, seizure of property, drug stamps**

**Date of Enactment or Last Substantive Amendment: October 13, 2011**

**Notice of Continuation: October 28, 2010**

**Authorizing, and Implemented or Interpreted Law: 59-1-302; 59-1-706; 59-1-701; 59-1-702; 59-1-703; 59-1-707; 59-19-104; 59-19-105; 59-19-107**

**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Uniform Affixing and Displaying of Drug Stamps  
**Statutory Reference:** 59-19-104  
**Rule Number:** R867-2B-4

4. Purpose of the rule or reason for the change:  
The rule repeal is necessary to implement 2012 SB 243.

6. Summary of the rule change:  
The rule is repealed since the statute that authorizes it has been repealed in 2012 SB 243.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. Any fiscal impact would have been considered in 2012 SB 243.

B) Local Government: None. Any fiscal impact would have been considered in 2012 SB 243.

C) Small Businesses (50 or less employees): None. Any fiscal impact would have been considered in 2012 SB 243.

D) Persons other than small businesses or local government: None. Any fiscal impact would have been considered in 2012 SB 243.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency):  
None. This rule is repealed since the statutes authorizing it have been repealed.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This repeal is necessary ~~due~~ due to statutory changes made by 2012 SB 243, thus creating no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive : Yes

Nonsubstantive :

Result of 5 year review: No

Originated by:  
2012 SB 243

Date:

Drafted by:

Date:

Lynn Solarczyk

Reviewed with Divisions:

Date:

*5/1/12*

Approved by Executive Director:

Date:

*5.1.12*

Approved for Submittal to DAR: SEE BELOW

Date:

M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

# DRAFT

1 ~~[R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code~~  
2 ~~Ann. Section 59-19-104.~~

3 ~~A. Drug stamps issued as evidence of payment of the tax imposed on marihuana and~~  
4 ~~controlled substances shall be affixed and displayed in a reasonably prominent position on the~~  
5 ~~container of the marihuana or controlled substance for which they were issued.~~

6 ~~1. For purposes of this rule, "container" means any substance or material that encloses or~~  
7 ~~encircles, but is not consumed with, the marihuana or controlled substance.~~

8 ~~2. If more than one container encloses or encircles the marihuana or controlled~~  
9 ~~substance, the stamps shall be affixed to and displayed on the container closest to the marihuana~~  
10 ~~or controlled substance.~~

11 ~~B. If the marihuana or controlled substance is not encircled or enclosed in a container,~~  
12 ~~the drug stamp shall be kept in reasonable proximity to the marihuana or controlled substance for~~  
13 ~~which it was issued.]~~

**R867. Tax Commission, Collections.**

**R867-2B. Delinquent Tax Collection.**

**~~[R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104.~~**

~~A. Drug stamps issued as evidence of payment of the tax imposed on marihuana and controlled substances shall be affixed and displayed in a reasonably prominent position on the container of the marihuana or controlled substance for which they were issued.~~

~~1. For purposes of this rule, "container" means any substance or material that encloses or encircles, but is not consumed with, the marihuana or controlled substance.~~

~~2. If more than one container encloses or encircles the marihuana or controlled substance, the stamps shall be affixed to and displayed on the container closest to the marihuana or controlled substance.~~

~~B. If the marihuana or controlled substance is not encircled or enclosed in a container, the drug stamp shall be kept in reasonable proximity to the marihuana or controlled substance for which it was issued.]~~

**KEY: taxation, controlled substances, seizure of property, drug stamps**

**Date of Enactment or Last Substantive Amendment: October 13, 2011**

**Notice of Continuation: October 28, 2010**

**Authorizing, and Implemented or Interpreted Law: 59-1-302; 59-1-706; 59-1-701; 59-1-702; 59-1-703; 59-1-707; 59-19-104; 59-19-105; 59-19-107**

**Tax Commission Rule Review Checklist**  
(This Sheet and any backup data must accompany each proposed rule or revision)

**Title of Rule:** Appeals to County Board of Equalization  
**Statutory Reference:** 59-2-1004  
**Rule Number:** R884-24P-66

4. Purpose of the rule or reason for the change:

The proposed amendment indicates the information a property owner must provide a county board of equalization (BOE) when appealing the valuation of property for property tax purposes. This amendment comes at the request of county assessors.

6. Summary of the rule change:

The proposed amendment modifies the information a property owner must supply a county BOE at the time the property owner is applying to appeal the valuation of property for property tax purposes. The amendment requires the property owner provide, at the time of application, evidence or documentation that supports the property owner's claim for relief. This differs from the current language that requires simply a statement indicating the evidence the property owner will present to the BOE and returns to language that was in place prior to April 12, 2012.

7. Aggregate anticipated cost or savings to:

A) State Budget: None. Property tax revenues are local revenues.

B) Local Government: None. The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to April 12, 2012.

C) Small Businesses (50 or less employees): None. The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to April 12, 2012.

D) Persons other than small businesses or local government: None. The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to April 12, 2012.

8. Compliance cost for affected persons ("person" means any individual, partnership, corporation, association, government entity, public or private organization of any character other than an agency): None. The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to April 12, 2012.

9. Comments by the department head on the fiscal impact the rule may have on businesses:

*This change returns to the practice in place prior to April 12, 2012 so there should be no fiscal impact.*

14. Indexing information: \_\_\_\_\_

Substantive: Yes

Nonsubstantive:

Result of 5 year review: No

Originated by:  
County Assessors

Drafted by:  
Lynn Solarczyk  
Reviewed with Divisions:

Approved by Executive Director:

Approved for Submittal to DAR: SEE BELOW  
M. Cragun

R.B. Johnson

M.B. Johnson

D. Dixon Pignanelli

Date:

Date:

Date: 5/1/12

Date: 5/2/12

Date:



**R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.**

- (1)(a) "Factual error" means an error that is:
- (i) objectively verifiable without the exercise of discretion, opinion, or judgment[, and];
  - (ii) demonstrated by clear and convincing evidence; and
  - (iii) agreed upon by the taxpayer and the assessor.
- (b) Factual error includes:
- (i) a mistake in the description of the size, use, or ownership of a property;
  - (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
  - (iii) an error in the classification of a property that is eligible for a property tax exemption under:
    - (A) Section 59-2-103; or
    - (B) Title 59, Chapter 2, Part 11;
  - (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;
  - (v) valuation of a property that is not in existence on the lien date; and
  - (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.
- (c) Factual error does not include:
- (i) an alternative approach to value;
  - (ii) a change in a factor or variable used in an approach to value; or
  - (iii) any other adjustment to a valuation methodology.
- (2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.
- (3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
- (a) the name and address of the property owner;
  - (b) the identification number, location, and description of the property;
  - (c) the value placed on the property by the assessor;
  - (d) the taxpayer's estimate of the fair market value of the property; [and]
  - (e) evidence or documentation that supports the taxpayer's claim for relief; and
  - (f) [a signed statement indicating the evidence or documentation that the taxpayer will present to the county board of equalization] the taxpayer's signature.
- (4) If the [signed statement] evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
- (5) If the taxpayer appears before the county board of equalization and fails to produce

the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the [minimum] information required under Subsection (3) is supplied [and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under Subsection (3)(e)], the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;

(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

(i) the name and address of the property owner;

(ii) the identification number of the property;

(iii) the date the notice was sent;

(iv) a notice of appeal rights to the commission; and

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

88 (c) The county did not comply with the notification requirements of Section 59-2-919.1.

89 (d) A factual error is discovered in the county records pertaining to the subject property.

90 (e) The property owner was unable to file an appeal within the time period prescribed by  
91 Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred  
92 during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was  
93 capable of filing an appeal.

94 (14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the  
95 factual error and any resulting changes to the property's valuation.

96 (15) The provisions of Subsection (13) apply only to appeals filed for a tax year for  
97 which the treasurer has not made a final annual settlement under Section 59-2-1365.

98 (16) The provisions of this rule apply only to appeals to the county board of equalization.  
99 For information regarding appeals of county board of equalization decisions to the Commission,  
100 please see Section 59-2-1006 and R861-1A-9.

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.**

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  - (i) objectively verifiable without the exercise of discretion, opinion, or judgment[, and];
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- (b) Factual error includes:
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  - (i) an alternative approach to value;
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- (2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.
- (3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:
  - (a) the name and address of the property owner;
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  - (d) the taxpayer's estimate of the fair market value of the property; ~~and~~
  - (e) evidence or documentation that supports the taxpayer's claim for relief; and
  - ~~[(e)](f) [a signed statement indicating the evidence or documentation that the taxpayer will present to the county board of equalization]the taxpayer's signature.~~
- (4) If the ~~[signed statement]~~evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
- (5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the [minimum] information required under Subsection (3) is supplied [and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under Subsection (3)(e)], the county board of equalization shall render a decision on the merits of the case.

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(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

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(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by

Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**KEY: taxation, personal property, property tax, appraisals**

**Date of Enactment or Last Substantive Amendment: February 9, 2012**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365**